

pure and simple. He wanted a shorter, or much shorter route to the sea for swimming and allied activities, the Grantee's own land being a second-layer land sandwiched between the first appellant's land (with its frontage to the seashore) and a public road or highway. It has never been doubted that there has been an alternative route at all material times to the seashore *via* the public road available to the Grantee, but the distance to be covered would be between one to two kilometres instead of the comparatively short route through the first appellant's land. To revert to the task in hand, the purpose of the Grantee's application was proper enough if the words "proper purpose" are to be construed in contradistinction to an improper purpose.

Next, was it reasonable in the circumstances to grant the private right of way? In *Liew Peck Lian's* case, it was held that "reasonably" did not mean "conveniently." With respect I agree, for were it otherwise, the floodgates would definitely be opened for similar applications in future; possibly made with complete abandon. There must be something more than just mere inconvenience or convenience; some situation that partakes of gravity or urgent necessity. Further there were no exceptional circumstances here which could have impelled the said Collector to make the order complained of, or which made it, for the said Collector, expedient to make an order which would be contrary to principle, the main one being the inviolateness of land in this case. Looking at the said Collector, it is difficult also to imagine a less urgent necessity or situation than that before the said Collector. It is neither desirable nor easy to specify such urgent or grave situations. I feel I ought to give an example at least. It is conceivable that in the old days when agricultural land was subdivided, no provision was ever made for surrender of portions of land for road reserve for access to a public road from land-locked interior lots, with the result that should the owners of lots with frontage to such public road decide to seal up their borders or boundaries, some occupiers would be completely denied any access at all to such public road. There is thus an urgent necessity, or a grave situation which would make it expedient for a Collector to grant a right of way against those favourably-placed landowners, against the principle of inviolateness of land. The said Collector has therefore erred in making the order complained of, in my judgment, and with this, it will not be necessary to deal with the fourth and fifth contentions. Had the order complained of been upheld,

A then this Court would make suitable amendments bearing such fourth and fifth contentions in mind.

B There is another point with which I think I ought to deal. The juxtaposition of the Torrens system of land law represented by the Code, with the principle of inviolateness of land, does nothing to detract the latter from its value.

C I therefore allow the appeal of the appellants by setting aside the order appealed from with costs in this Court but with no order as to costs for proceedings before the said Collector.

Appeal allowed.

D Solicitors: *Krish, Shan & Lee; Shearn, Delamore & Co.; Lee Boon Peng & Co.; J. Nadchatiram.*

THRIMALAI & ANOR. v. MOHAMED MASRY BIN TUKIMIN

[O.C.J. (Shankar J.) January 15, 1986]

[Johore Bahru — Civil Suit No. 96 of 1985]

F *Damages — Leg amputation — Injury to female genitals — Fractured femur and acetabulum — Plaintiff a housewife and mother of 5 — \$90,000 as general damages.*

The plaintiff was a 32 year old married woman with 5 children. She suffered the following injuries as a result of a road accident:

- G (a) fracture mid shaft right femur;
- (b) fracture acetabulum of pelvis on both sides;
- (c) about 10 c.m. lacerated wound over her genitals. Anterior wall of vagina was torn and extending to urethral opening;
- (d) multiple contusions and abrasions around external genitalia;
- H (e) 15 c.m. laceration over inguinal region on right side. This was a deep laceration exposing the muscles and the pubic bone;
- (f) 10 c.m. x 12 c.m. laceration over right knee with skin loss. The patella was exposed;
- (g) 4 c.m. laceration over dorsum of right foot;
- I (i) punctured wound over right forearm.

Her right leg was amputated above the knee. Sexual intercourse was possible but painful and if conception were to occur, a caesarean was required.

Liability was admitted.

Held: (1) taking the all important factor that the global sum assessed for several injuries should be scaled down by reason of overlapping, the sum of \$85,000 is a fair award for general damages for all the plaintiff's injuries on all counts. \$5000 should be added for proportionate loss of earning capacity. Interest was assessed at 8% per annum from the date of service of writ up to date of judgment;

(2) special damages awarded was as follows:

1) Agreed specials	\$ 2,153
2) 5 artificial limbs @ \$2000 each	\$ 10,000
3) Maintenance thereof for 30 years at \$100 per annum	\$ 3,000
4) Revision surgery and incidentals	\$ 4,000
5) Past earnings	\$ 1,560
	<u>Total \$20,713</u>

There would be interest at 4% per annum from the date of the service of the writ on the agreed specials and past earnings or \$3,713 up to the date of this judgment. The other specials awarded had not yet been incurred. Consequently they would be lumped into the decretal amount of \$110,713 on which interest would run at 8% per annum from the date hereof up to realization.

Cases referred to:

- (1) *Phuah Jee Suar v. Nila Vasu Pillai* [1973] 1 M.L.J. 186, 188.
- (2) *Wieland v. Cyril Lord Carpets Ltd.* [1969] 3 All E.R. 1006.
- (3) *Tee Dass*, Quantum in Accident Claims vol. 3 P 333.
- (4) *Lee Sau Kong v. Leow Cheng Chiang* [1961] M.L.J. 17
- (5) *Calderbank v. Calderbank* [1975] 3 All E.R. 333.
- (6) *Cutts v. Head & Anor.* [1984] 1 All E.R. 597.

CIVIL SUIT.

N. K. Sandhu (Mrs.) for the plaintiffs.

S. P. Veloo for the defendant.

Cur. Adv. Vult.

Shankar J.: In 1984 there were 617 fatalities from road accidents alone in Johore State. Those who survived with injuries numbered 3189. The plaintiff was one of them.

At the time of her accident on October 17, 1984, she was 32 years old. She had been married 16 years. Her first child arrived within the first year of her marriage. Four others followed, the last of which was born some seven years before the date of the accident.

The direct injuries caused by the impact were as follows:—

- A a) Fracture mid shaft right femur;
- b) Fracture acetabulum of pelvis on both sides;
- c) About 10 cm. lacerated wound over her genitals. Anterior wall of vagina was torn and extending to urethral opening;
- B d) Multiple contusions and abrasions around external genitalia;
- e) 15 cm. laceration over inguinal region on right side. This was a deep laceration exposing the muscles and the pubic bone;
- C f) 10 cm. x 12 cm. laceration over right knee with skin loss. The patella was exposed;
- g) 4 cm. laceration over right shin;
- h) 4 cm. laceration over dorsum of right foot;
- i) Punctured wound over right forearm.

D She was admitted into hospital and there her right leg was amputated above the knee. In due course she was discharged from the hospital. A medical report dated June 26, 1985 reveals that she had coitus about one month previously but it was painful. The doctor states that cosmetically the vaginal opening shows distortion as a result of the injury but that this can be rectified by surgery. He further states that the plaintiff is capable of having sexual intercourse but because of the injuries would not be able to have it in all positions. The husband will not be able to put his weight on her. Full penetration is possible but the movements on the part of the husband will have to be gentle. If conception occurs, normal delivery is no longer possible. A caesarean is required.

G The plaintiff comes from humble circumstances. Apart from her role as housewife and mother she also operated a canteen in a factory in Pasir Gudang.

H The trial took place on September 12, 1985. Liability was admitted. There were agreed special damages of \$2,153 for various expenses incurred. General damages and the loss of past and future earnings were in issue.

I The approach taken by the plaintiff's counsel was to take each of the injuries in turn, and set them beside awards made in previous cases for injuries of that kind and thereby arrive at a global figure. Thus it was submitted that the appropriate component awards for various items should be as follows:—

- a) For the fracture of the right femur \$14,000

b) For the fracture acetabulum	\$20,000
c) For the vaginal injuries	\$36,000
d) For the genital contusions laceration on the inguinal region knee and shin and the dorsum of the right foot	\$25,000
e) For the right forearm	\$ 6,500
f) For the amputation of the leg	\$50,000

These components yield a total figure of \$151,500.

At the commencement of the trial, in an effort to see if the gap could be bridged, I asked counsel for both parties what their respective estimates were for general damages. The gap was so wide that there was no option but to proceed.

Having reached the journey's end, I feel impelled to state once again that in cases of multiple injuries, it is not the correct approach to assess what each would be worth separately and then to insist upon payment of the global figure so arrived at. The end result of such an exercise is evident in the present case where the global award claimed almost approached what a court would award to a paraplegic. Can we ignore the fact that notwithstanding the lacerations to various areas of the right leg, the leg itself is no longer there since it has been amputated? At the risk of repetition therefore I would state once again that where pain and suffering, loss of amenities, and discomfort to a plaintiff result from multiple injuries it would be wrong to value each injury as though the others had not taken place and then to add all the figures together. (See *Phua Jee Suan v. Nila Vasu Pillai*⁽¹⁾ and *Wieland v. Cyril Lord Carpets Ltd.*⁽²⁾).

Consequently it is my view that it would be more consonant with the law and the requirements of justice, in this case, for me to take the fracture to the right femur, the lacerations to the right inguinal region, the right knee, shin and foot and the amputation of the leg in one sweep, noting that the conventional award for the amputation of the leg above the knee today is around \$50,000. The other focus here is the admitted serious injuries which the plaintiff has suffered in the genital area, as to which there are going to be lasting side effects. I agree with defence counsel that *Tan Kit Buay (m.w.) & Ors. v. Koh See Tee*⁽³⁾ is a very useful guide as to the proper award here for the genital injuries and the residual disabilities therefrom. There are some other significant factors, e.g. the wound over the right forearm, the unlikelihood of the plaintiff making any further contributions

A to the 70 million population target seeing as there have been no children after the first five, for the last six years, the normal daily routine of the plaintiff which does not include any other sporting or recreational activities, in which she was accustomed to indulge, the necessity for further remedial operation which will bring about a certain amount of pain and suffering, and other day-to-day irritations and drawbacks the permanent incapacity will cause.

C Taking all these into consideration, and also the all-important factor that the global sum assessed for several injuries should be scaled down by reason of overlapping, I consider the sum of \$85,000 a fair award for general damages for all the plaintiff's injuries on all counts.

D Turning now to the issue of special damages and having regard to the submissions made by counsel, I consider \$2,000 a fair award for the cost of an artificial limb and I agree with defence counsel that it would be reasonable to provide for five renewals of the limb for the rest of the plaintiff's life span. I give \$10,000 under this head. In the absence of evidence from the plaintiff and the concession made by defence counsel, I also award \$100 a year for maintenance for 30 years yielding \$3,000. For revision surgery and incidental expenses I award \$4,000.

F Since *Lee Sau Kong v. Leow Cheng Chiang*⁽⁴⁾ the Courts of this country have repeated *ad nauseam* that damages have to be proved. But special damages must be strictly proved. To my mind the evidentiary burden here goes beyond establishing the claim on a mere balance of probabilities. The figures put forward for special damages must come as close to mathematical certainty as the circumstances of the case would allow.

H Consequently, I do not propose to speculate on what the plaintiff may or may not have earned as a canteen operator. The licence of the canteen was her brother's and he was not called. No officer from the factory in which the canteen was located was called. Not a single document was produced. In examination-in-chief it was suggested that the earnings were in the order of \$10 to \$15 per day. In cross-examination, nett earnings were reduced to \$5 to \$6 per day and in re-examination by her own counsel this figure was further reduced to \$3 to \$4 per day. Albeit with considerable hesitation, I make an award for past earnings at the rate of \$4 per day for 26 working days per month for 15

months (i.e. from the date of the accident to the date of judgment) yielding \$1,560.

The plaintiff has stated that she proposes to return to her job as canteen operator. Once the artificial limb has been fitted, she will have sufficient mobility to carry out her pre-accident tasks. So the proper head of damage here is not for loss of future earnings, but something for a proportionate loss of earning capacity, attributable to the residual disabilities. My award here is \$5,000. For convenience of calculation, I have aggregated this to the sum of \$85,000 making \$90,000 for general damages and I award interest thereon at 8% per annum from the date of the service of the writ up to the date of this judgment.

The special damages which I have awarded are as follows:

1) Agreed specials	\$ 2,153
2) 5 artificial limbs @ \$2,000 each	\$ 10,000
3) Maintenance thereof for 30 years at \$100 per annum	\$ 3,000
4) Revision surgery and incidentals	\$ 4,000
5) Past earnings	\$ 1,560
Total :	\$ 20,713

There will be interest at 4% per annum from the date of the service of the writ on the agreed specials and past earnings or \$3,713 up to the date of this judgment. The other specials awarded have not yet been incurred. Consequently they will be lumped into the decretal amount of \$110,713 on which interest will run at 8% per annum from the date hereof up to realization.

One last word on costs. As I earlier observed, the disparity in what the plaintiff was asking and what the defendant was prepared to offer was so wide that there was no option but for this case to go the whole hog. Maintaining credibility must be a matter of mutual concern both for the law and lawyers alike. The problems generated in this respect by permitting plaintiffs to persist in exaggerated notions of the value of their claims must be self-evident. One way of putting matters back into proper perspective is to take cognizance of the cases of *Calderbank v. Calderbank*⁽⁵⁾; *Cutts v. Head & Anor.*⁽⁶⁾; and generally *Supreme Court Practice* (1985) – 22/1/6, 62/2/11 and 62/2/86. A genuine offer letter without admission of liability can be made to do the work of an actual payment into court.

But there are extenuating circumstances here. This case was plaintiffs' counsel's maiden voyage into the sea of litigation and the client has been brought safely home to port. Liability not being in issue, it was open to the defendant to take the usual precautionary measures to save costs. Since this has not been done, I order that the costs of this action be taxed and paid by the defendant to the plaintiffs.

Order accordingly.

Solicitors: N.K. Sandhu & Co.; V.P. Nathan & Partners.

PHUAH CHOON HWANG & ANOR. v. HASSAN & KONG YEAM

[O.C.J. (Mohamed Dzaidin J.) September 30,
November 4, 1985 & February 24, 1986]

[Penang – Originating Petition of Course No. 7 of 1984]

Legal Profession – Solicitors' costs – Delivery of bills of costs by solicitors – Protest by clients for bills – Request by clients for taxation of bills – Petition for order for taxation – Limitation by statute – Correcting an injustice – Inherent jurisdiction of court – Legal Profession Act, 1976, ss. 126 & 128(2).

Practice and Procedure – Costs – Bills of – Protest by clients – Legal Profession Act, 1976, ss. 126 & 128(2).

In 1974, the petitioners retained the respondents as their solicitors in Penang High Court Originating Summons No. 220 of 1974 involving the distribution of the estate of a deceased. On June 30, 1983, the respondents informed the petitioners' solicitors in Singapore that in lieu of taxation they would like to deduct from the estate money the sum of \$45,000.00 and \$11,000.00 respectively towards their professional fees, charges and disbursements. The petitioners protested at the bills and requested that the respondents have their bills of costs taxed. On September 7, 1983, the respondents forwarded their two sets of bills of costs to the petitioners' solicitors. On September 28, 1984, the petitioners filed the present petition praying for an Order of Course for the respondents' bills to be taxed on solicitor and client basis. As more than one year had elapsed, the petitioners' solicitors made an application for an extension of time limited by section 126 of the Legal Profession Act, 1976. The respondents contended that the petitioners were barred from obtaining any order for taxation under section 128(2) of the Act. The issue was whether there was such an injustice which required the exercise of the Court's inherent jurisdiction.

Held: (1) this is a proper case where the court should exercise its inherent jurisdiction by ordering taxation of both bills of costs because justice requires that such an order should be made, notwithstanding that the petitioners'